

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1402 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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KISHANBHAI KHEMCHAND MAKWANA

Versus

COMMISSIONER OF POLICE

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Appearance:

MR MUKESH D RAVAL for Petitioner

MR SAMIR DAVE AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/10/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Mr. Satish R. Patel for  
Advocate Mr. Mukesh D. Raval on behalf of the  
petitioner and learned A.G.P. Mr. Samir Dave for the  
respondents.

2. The detention order dtd. 15/12/98, passed by the  
respondent NO. 1 - Commissioner of Police, Ahmedabad  
City, Ahmedabad, against the petitioner in exercise of

powers conferred under Sec. 3 (1) of Gujarat Prevention of Antisocial Activities Act, 1985 (PASA for short), is challenged in the present petition under Article 226 of the Constitution of India.

3. The grounds of detention supplied to the petitioner-detenu under Sec. 9 (1) of the PASA, is produced at Annexure 'C', which indicate that two criminal cases dtd. 9/7/98 and 12/12/98 were registered against the petitioner at Nashabandhi Police Station, South Division, for the offences under Prohibition Act. That 57.2 Liter and 197.5 Liter countrymade liquor was respectively seized during the investigation of said criminal cases. That first case is pending for trial, while other case is pending investigation. Over and above the material in respect to investigation of said two criminal cases, two witnesses on assurance of anonymity, have supplied information against the petitioner. That accordingly on 17/11/98, when the witness was passing through Kankariya road, near Parsi Agiyari, the petitioner and his accomplice stopped the witness alleging that he is a police informant and supplying information about the petitioner to the police. The petitioner and his accomplice started beating the witness. That on raising of alarm of the witness, passers-by gathered there, however the petitioner took out knife and rushed to the people and thereby the people had dispersed. The other witness has stated incident of 29/11/98. On that day, the petitioner and his accomplice asked the witness to store the countrymade liquor in his premises illegally. On refusal by the witness, the petitioner started beating the witness, bringing him on public road and on alarm of the witness people gathered there, however the petitioner having rushed to the people with open knife, people dispersed.

4. On the basis of the abovestated material, the respondent NO. 1 as a detaining authority has come to the conclusion that the petitioner is a 'bootlegger' within the meaning of Sec. 2(b) of PASA. That resort to enforcement of general law not being sufficient to prevent the petitioner from continuing his prejudicial activity and as such the impugned order is passed.

5. The petitioner has challenged the impugned order on numerous grounds.

It has been contended on behalf of the petitioner that representation dtd. 27/7/99 was made to the Chief Minister by the Advocate of the petitioner, copy of which is produced at Annexure 'D'. That vide the said

representation, the petitioner has claimed copy of FSL Report or report of Chemical Analyzer alongwith other documents of criminal case registered at C.R. NO. 137/98 and C.R. NO. 263/98. It is submitted that the respondent NO. 1 - Commissioner of Police, replied to the said representation on the basis of communication received from the State Govt. dtd. 7/8/99 vide letter addressed to the petition 10/8/99. That it was conveyed to the petitioner that all the relevant papers were supplied to the petitioner-detenu and his representation about non-supply is unreasonable. It is further stated that report of F.S.L. as claimed was not supplied as the same was not available on that day. That the representation of the petitioner has been filed. It is further submitted that petitioner received another communication dtd. 16/8/99 addressed by the respondent NO. 1 - Commissioner of Police, alongwith the copy of F.S.L. report have been supplied. That perusal of said copy suggest that F.S.L. report with respect to prohibition case NO. 263/98 was sent to the investigation authority on 1/3/99, while report in respect to prohibition case NO. 137/98 was sent on 13/8/98. Shri Satish Patel learned advocate appearing on behalf of the petitioner has urged that reply dtd. 10/8/99 as well as 16/8/99 contain incorrect factual statement as on the date of detention order i.e. 15/12/98, F.S.L. report in respect to prohibition case No. 137/98 was already sent by F.S.L. to the investigation authority on 13/8/88. Similarly, F.S.L. report of another case was also available after 1/3/99, yet on 10/8/99. Respondent NO. 1 has failed to supply the same, stating that the same was not supplied as was not available. That the said act and action on the part of the respondent No. 1 i.e. non-supply of material document, prevented the petitioner from making effective representation against his detention which amounts to breach of constitutional imperative under Article 22 (5) of the Constitution, rendering the detention order illegal.

6. Learned A.G.P. Mr. Samir Dave attempted to salvage the issue by suggesting that in reply dtd. 10/8/99 the respondent NO. 1 has stated that copy was not supplied alongwith the other papers, as the same was not available with him. However, the submission does not explain anomaly that though the F.S.L. report dtd. 13/8/98 and 1/9/99 were available and claimed by the representation dtd. 27/8/99, why the same was not supplied to the petitioner.

7. The affidavit filed by the respondent NO. 1 dtd.

17th June, 1999, is totally devoid of any reasonable explanation for non-supply or late supply of the said F.S.L. report to the petitioner. Under the circumstances, I am constrained to hold that on account of breach committed by the respondent NO. 1 of the constitutional imperative guaranteed under Article 22 (5) of the Constitution, the continued detention of the petitioner has become illegal and as such the detention order deserves to be quashed and set aside.

8. On the basis of the foregoing discussion, the petition is allowed. The detention order dtd. 15/12/98 passed by the respondent NO. 1 - Commissioner of Police, Ahmedabad City, Ahmedabad, against the petitioner is hereby quashed and set aside. The petitioner Kishanbhai Khemchand Makwana is ordered to be set at liberty forthwith, if not required in any other case.

Rule to that extent made absolute.

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